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EXAMINER

DEANE JR, WILLIAM J

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/783,191
Filing Date: February 14, 2001
Appellant(s): BAUER ET AL.

Kevin M. Mason
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For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed November 2, 2004 & the supplemental appeal brief filed March 22, 2004.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1 - 41 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

5,546,395	Sharma et al.	08-1996
5,926,483	Javitt	07-1999
6,104,803	Weser et al.	08-2000

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims: evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 112

Claims 1 – 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Appellant regards as the invention.

Specifically, there is no proper antecedent basis for "said connections" (plural) in claim 1, line 4. The same is true at line 6 of claim 10. Claim 19, line 4 and Claim 27, line 6 also lack proper antecedent basis for "said connections".

Claim Rejections - 35 USC § 102

Claims 1, 8, 10, 17 – 19 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,546,395 (Sharma et al.).

With respect to claims 1, 10, 19 and 27, Sharma et al. teach the claimed method (see Abstract and Col. 1, line 67 – Col. 2, line 24). Note the "at least one connection" as recited in the instant claims. With respect to multiple applications note the use of pre-recorded messages (one application) which are sent over the telephone line uncompressed, Col. 7, lines 5 – 14 and that voice (second application) is sent compressed (Abstract). In addition, note Col. 32, lines 31 – 41. Here, for moderate quality voice over data applications one compression algorithm is used, but if applications need higher fidelity a new compression algorithm is renegotiated continually for conferences.

With respect to claims 8 and 17, note that at least one device need be notified of the encoding scheme or nothing would happen. Note the encoding scheme is negotiated, as shown above.

With respect to claim 18, note col. 11, lines 14 – 23.

Claim Rejections - 35 USC § 103

Claims 2 – 7, 9, 11 – 16, 20 – 26, 28 – 37 and 40 - 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharma et al. in view U.S. Patent No. 5,926,483 (Javitt).

With respect to claims 7, 16, 25, 33, 35 - 36, Sharma et al. teach the claimed device except for explicitly teaching the call segments or half circuits and the independently selecting aspect, as claimed. However, note that Javitt teaches such at Col. 3, lines 56 – 64 and Col. 4, lines 57 – 61. It would have been obvious to one of ordinary skill in the art to have incorporated the ability to dynamically and independently adjust the bandwidth utilized by a plurality of applications for each half circuit or segment as, as taught by Javitt, in Shama et al. because a user on one half of the circuit may have different preferences than another user on the other half of the circuit. That is, one user may have a preference for compression while another user may not (see Col. 3, lines 56 – 64 of Javitt).

With respect o claims 5, 14 and 23, it would have been obvious to one of ordinary skill in the art to have selected an encoding scheme that performs well under network conditions.

With respect to claims 2 – 4, 6, 11 - 13, 15, 20 – 22, 24, 28 – 30 and 32, note the Abstract of Javitt and Col. 2, lines 25 – 31 of Javitt. The claimed “predetermined time period” may be peak hours for high traffic.

With respect to claims 8 - 9, 17 - 18, 26, 31 and 34, note Col. 30, lines 55 – Col. 32, lines 40 of Sharma et al.

With respect to claim 37, note Col.3, line 60 – Col. 4, line 23 of Sharma et al.

With respect to claims 40 – 41, note compression rate or encoding scheme is based on speed and volume (amount of silence detected). See Abstract of Sharma et al.

Claims 38 – 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharma et al. and Javitt in view of U.S. Patent No. 6,104,803 (Weser et al.).

Sharma and Javitt teach the claimed method except for the particular application being an IVR. However, Weser et al. teach that IVRs are old in the art (Col. 2, line67 – Col. 3, line14) and it would have been obvious to one of ordinary skill in the art to have incorporated such an IVR into the Sharma/Javitt method as such would only entail the substitution of one know application for another. Note the voicemail used in Sharma et al. is interactive (Col. 7, lines 14 – 15). The use of an IVR has its well known advantages.

(11) Response to Argument

With respect to appellants’ argument with respect to claims 1 and 35 (Supplemental Brief, pages 3 – 4), Appellants argue that Sharma et al. do not disclose a plurality of applications that dynamically influence which compression scheme is used.

However, after comparing the above-cited columns, namely, in Col. 7, lines 5 – 14 and Col. 32, lines 31 – 41 of Sharma et al. with page 12, lines 15 – 26 of the instant application, it is apparent that Sharma et al. read on claims 1 and 35. Appellant discloses 3 applications, namely IVR, voicemail and conferencing. Note that Sharma et al. voice messages (voicemail, Col. 3, line 60) and conferencing (Col. 32, line 35 – 38). In addition note reference to applicationsat Col. 32, lines 33 – 35.

With respect to claims 5, 14 and 23, Appellants argue (Supplemental Brief, page 5) that the cited references do not disclose an encoding scheme that changes as conditions on the network change. However, Sharma teaches that the selection of the encoding scheme dynamically changes depending on the changes of speed and bandwidth of the network (see Abstract). In addition, see Col. 32, lines 35 – 40 of Sharma et al. As new parties enter an on-going communication (a network condition has changed) the encoding scheme is dynamically changed. Additionally, see Col. 32, lines 39 – 41 starting with “or”. As the link fluctuates (a change in the network condition) the encoding scheme changes.

With respect to claims 7, 16, 25 and 33, Appellants argue (Supplemental Brief, page 6) that neither Sharma et al. or Javitt teach or disclose selecting an encoding scheme for each half-circuit. The examiner contends since both ends (or each half) of the communication link are consulted in the renegotiation, then the encoding scheme is independently selected for each half, albeit, it is the same encoding scheme for each half. This is analogous to the handshake negotiation between two facsimile machines; one using 14.4 modem and one using 28.8 modem. The negotiation will likely result in

both communicating using 14.4 speed (also, note use of fax application in Sharma et al., Col. 5, lines 39 – 40). Note again, Col. 32, lines 31 – 41 of Sharma et al., as a new party enters the communication the encoding scheme is renegotiated. It may be that only the new party would have to change its encoding scheme, but it is also possible that other parties to the communication would have to change their encoding scheme until one scheme is found to be acceptable to all parties.

Javitt was used to more clearly show independent selection of an encoding scheme based on changing traffic conditions. See Col. 3, lines 56 – 64 and Col. 4, lines 58 – 61. Here a determination is made as to which channel (half of the circuit) is going to be compressed and which will be uncompressed. If a arrives in compressed and a user preference is that no calls arrive compressed, then the system changes the compressed call to an uncompressed call. As claimed by Appellant, here both half circuits were independently given an encoding scheme. The first end of the call was independently given a compressed scheme and the second end of the call was independently given an encoding scheme, namely uncompressed encoding scheme.

For the above reasons, it is believed that the rejections should be sustained.

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Art Unit: 2642

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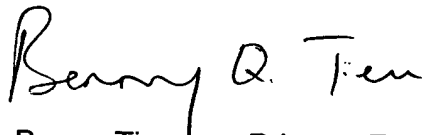
Respectfully submitted,

August 9, 2004

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Attachment: PTO- 1449 (paper #8)